

Chapter 193

(House Bill 402)

AN ACT concerning

**Washington Metropolitan Area Transit Authority – Sovereign Immunity –
Employee Whistleblower Protection**

FOR the purpose of providing that certain whistleblower protections for certain employees of the State apply to the employees of the Washington Metropolitan Area Transit Authority contingent on certain action by the Commonwealth of Virginia and the District of Columbia; specifying certain whistleblower protection laws that the General Assembly considers similar for the purpose of a certain provision of law; establishing the intent of the General Assembly to waive the sovereign immunity of the State extended to the Washington Metropolitan Area Transit Authority for certain purposes; altering the Washington Metropolitan Area Transit Authority Compact to waive jurisdictional sovereign immunity extended to the Washington Metropolitan Area Transit Authority for certain purposes and subject to a certain contingency; and generally relating to the sovereign immunity of the State extended to the Washington Metropolitan Area Transit Authority.

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 5–301
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to
Article – Transportation
Section 10–209
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 10–204 Title III Article XVI Section 80
Annotated Code of Maryland
(2012 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – State Personnel and Pensions

5–301.

(A) This subtitle applies to:

(1) all employees and State employees who are applicants for positions in the Executive Branch of State government, including a unit with an independent personnel system; AND

(2) IF BOTH THE COMMONWEALTH OF VIRGINIA AND THE DISTRICT OF COLUMBIA ENACT SIMILAR WHISTLEBLOWER PROTECTIONS OR WAIVE THEIR SOVEREIGN IMMUNITY AS APPLIED TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY FOR THE PURPOSE OF PROVIDING WHISTLEBLOWER PROTECTIONS, ALL EMPLOYEES OF THE WASHINGTON METROPOLITAN TRANSIT AUTHORITY.

(B) FOR THE PURPOSE OF SUBSECTION (A)(2) OF THIS SECTION, THE GENERAL ASSEMBLY CONSIDERS THE FOLLOWING WHISTLEBLOWER PROTECTION LAWS TO BE SIMILAR TO WHISTLEBLOWER PROTECTION LAWS ESTABLISHED UNDER TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL AND PENSIONS ARTICLE:

(1) THE DISTRICT OF COLUMBIA'S EMPLOYEES OF DISTRICT CONTRACTORS AND INSTRUMENTALITY WHISTLEBLOWER PROTECTION ACT, TITLE 2, CHAPTER 2, SUBCHAPTER XII OF THE CODE OF THE DISTRICT OF COLUMBIA; AND

(2) THE COMMONWEALTH OF VIRGINIA'S FRAUD AND ABUSE WHISTLEBLOWER PROTECTION ACT, TITLE 2.2, CHAPTER 30.1 OF THE CODE OF VIRGINIA.

Article – Transportation

10-209.

IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE SOVEREIGN IMMUNITY OF THE STATE NOT EXTEND TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY FOR THE PURPOSES OF CLAIMS BROUGHT AGAINST THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY BY AN EMPLOYEE OR FORMER EMPLOYEE UNDER:

(1) THE FALSE CLAIMS ACT, ~~32~~ 31 U.S.C. § 3729 ET SEQ., AS AMENDED; AND

(2) TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Transportation

10-204.

Title III

Article XVI

80.

(A) The Authority shall be liable for its contracts and for its torts and those of its directors, officers, employees and agents committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. [Nothing] EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SECTION, NOTHING contained in this title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the zone of any immunity from suit.

(B) THE SOVEREIGN IMMUNITY OF THE DISTRICT OF COLUMBIA, MARYLAND, AND VIRGINIA DOES NOT EXTEND TO THE AUTHORITY FOR THE PURPOSES OF CLAIMS BROUGHT AGAINST THE AUTHORITY BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE AUTHORITY UNDER:

(1) THE FALSE CLAIMS ACT, 31 U.S.C. § 3729 ET SEQ., AS AMENDED;

OR

(2) A LAW ENACTED BY THE DISTRICT OF COLUMBIA, MARYLAND, OR VIRGINIA THAT AUTHORIZES A PRIVATE RIGHT OF ACTION FOR AN ALLEGED VIOLATION OF A LAW INTENDED TO PROVIDE WHISTLEBLOWER PROTECTIONS.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act may not take effect until similar Acts are passed by the District of Columbia and the Commonwealth of Virginia; that the District of Columbia and the Commonwealth of Virginia are requested to concur in this Act of the General Assembly by the passage of substantially similar Acts; that the Department of Legislative Services shall notify the appropriate officials of the District of Columbia, the Commonwealth of Virginia, and the United States Congress of the Passage of this Act; and that, upon concurrence in this Act by the District of Columbia, the Commonwealth of Virginia, and the United States, the Governor of the State of Maryland shall issue a proclamation declaring this Act valid and effective and shall forward a copy of the proclamation to the Executive Director of the Department of Legislative Services.

SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of this Act, this Act shall take effect October 1, 2020.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.